

BEFORE THE  
BOARD OF MEDICAL QUALITY ASSURANCE  
STATE OF CALIFORNIA

In the Matter of the Accusation  
against:

IHSAN KARAAGAC, M.D.  
100 Commonwealth Avenue  
San Francisco, CA 94118  
License No. A 023676

Respondent.

NO. D-3235


N 23636

**DECISION**

The attached Proposed Decision of the Administrative Law  
Judge is hereby adopted by the Board of Medical Quality  
Assurance as its Decision in the  
above-entitled matter.

This Decision shall become effective on November 1, 1984.

IT IS SO ORDERED November 1, 1984.

  
MILLER MEDEARIS  
Secretary-Treasurer  
Division of Medical Quality Assurance

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San Francisco, CA 94118	)	N 23636
License No. A 023676	)	
	)	
Respondent.	)	

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PROPOSED DECISION

This matter was heard before Stewart A. Judson, Administrative Law Judge, State of California, Office of Administrative Hearings, on October 10, 1984 at San Francisco, California.

The complainant was represented by David Galie, Deputy Attorney General. Ihsan Karaagac, M.D., was present and represented himself.

PRELIMINARY MATTER

The standard of proof is the clear and convincing evidence to a reasonable certainty test under Ettinger v. BMOA (1982) 135 C.A. 3d 853.

FINDINGS OF FACT

I

The accusation was made by Kenneth Wagstaff in his official capacity as the Executive Secretary of the Board of Medical Quality Assurance, State of California (the Board).

II

On March 16, 1970, certificate No. A-023676 was issued by the Board to Ihsan Karaagac, M.D. (respondent). Respondent's address of record is 100 Commonwealth Avenue, San Francisco, California 94118.

### III

Respondent urges that Section 820\* of the Business and Professions Code\*\* is unconstitutional in that it is an invasion of his right to privacy under federal and state law.

### IV

There is no case law directly on point. An administrative agency has no power to declare a statute unenforceable or refuse to enforce a statute on the basis that it is unconstitutional unless an appellate court has determined that the statute is unconstitutional, or to declare a statute unenforceable or refuse to enforce a statute on the basis that federal law prohibits its enforcement without a prior appellate court ruling to said effect (Article 3, section 3.5, California State Constitution).

### V

The individual's right to privacy as an inalienable right is guaranteed under Article 1, section 1 of the California State Constitution. It is a self-executing right and is intended to protect against, among other things, unwarranted disclosure to governmental agencies of personal information. It is not, however, an absolute right. The incursion into one's area of privacy may be justified by a compelling state interest (Gunn v. E.D.D. /1979/ 94 C.A. 3d 658). Any statute authorizing an invasion of privacy must be subject to strict scrutiny, "and if state scrutiny is to be allowed, it must be by the least intrusive means" (Board of Medical Quality Assurance v. Gherardini /1979/ 93 C.A. 3d 669). The goal of the statute "cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved" (Shelton v. Tucker, 364 U.S. 497).

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\*Section 820 states, in relevant part:

"Whenever it appears that any person holding a license, certificate or permit under this division, under Chapter 17 (commencing with Section 9000) of Division 8, or under Chapter 4 (commencing with Section 17800) of Part 3 of Division 7 may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency."

\*\*All statutory references are to said Code unless otherwise noted.

## VI

The statutory scheme enacted in Sections 820 through 828 is obviously designed to protect individuals from the risk of harm which could result from a licensee's inability to safely practice his/her profession because of an impairment due to mental or physical illness affecting competency. It cannot be seriously denied that the protection of the public from practicing physicians and surgeons who may be so impaired is a matter of compelling state interest.

## VII

Section 820 provides that a licensing authority,\* when it appears (emphasis added) that a licensee may be so affected, may order the licensee to undergo examination by a physician or psychologist designated by the licensing authority. The examining physician's report is available to the licensee. The Division is authorized to meet in closed session, when considering evidence relating to a licensee's physical or mental condition, to the extent necessary to protect the licensee's privacy (Section 827). If no further action is determined necessary, all proceedings, records and documents, including the examining physician's report, are kept confidential (Section 828). Refusal of the licensee to undergo an examination after an order for such has been issued by the Division can result in disciplinary action (Section 821).

## VIII

If the Division should determine that the licensee is mentally or physically impaired to the extent that his/her ability to practice safely is in question, the Division may take disciplinary action against the licensee (Section 822). Procedures for reinstatement of a licensee disciplined under Section 822 are prescribed in Section 823. In any event, the procedural safeguards prescribed under the Administrative Procedure Act are available to the licensee against whom action is sought under Sections 821 and 822.

## IX

The statutory scheme outlined hereinabove is designed to protect the public and the licensee's privacy. It is only when the licensee fails to undergo a physical examination or when the Division has determined that an impairment exists that disciplinary proceedings are authorized. The procedure serves a compelling state interest while concurrently providing the least intrusive method for achieving its purpose.

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\*With respect to physicians and surgeons, "licensing agency" means the Division of Medical Quality (Section 825).

X

On August 4, 1983, the Board filed a Petition for an Order for Psychiatric Examination of respondent with the Division. On October 21, 1983, the Division, acting under Section 820, issued an Order to respondent compelling him to undergo a psychiatric examination to be conducted by a physician designated by the Division within sixty days of receipt of the designated physician's name. Respondent was served at his address of record, by certified mail, with the Petition and Order on October 28, 1983. Receipt was had on October 29, 1983.

XI

By letter dated October 28, 1983 and served upon respondent by certified mail at his address of record on November 1, 1983, respondent was notified as to the name, address and telephone number of the designated examining physician. A follow-up letter, dated November 28, 1983, was sent to respondent reminding him of the time requirements set forth in the Division's order.

XII

The evidence established that respondent was aware of the name of the designated examining physician. Respondent has failed to contact said physician and, as of the date of this hearing, has failed to comply with the Division's Order.

DETERMINATION OF ISSUES

I

Respondent has violated Section 820. Cause for disciplinary action exists under Section 821.

II

The procedures set forth in Sections 820 through 828 are not an unconstitutional invasion of respondent's right to privacy under Article 1, section 1 of the California State Constitution, Articles IV, V and XIV of the United States Constitution or federal law.

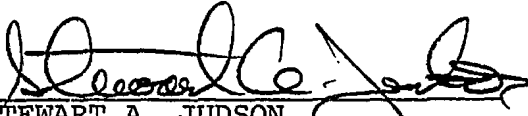
ORDER

1. Certificate No. A-023676 of Ihsan Karaagac, M.D., is revoked.

2. The order of revocation is stayed for a period of sixty (60) days under the following conditions:

- A. Respondent shall comply with the Division's Order No. P-71.
- B. The Division may extend the stay for an additional sixty (60) days if it redesignates an examining physician, should the Division deem it necessary and just to do so.
- C. Respondent shall not engage in the practice of medicine until such time as he has complied with the Division's Order No. P-71 and has been so notified in writing. At said time, the stay shall become permanent.
- D. Should respondent fail to comply with the Division's Order within sixty (60) days of the effective date of this decision, or within whatever other time the Division may prescribe under subparagraph B hereinabove, the stay shall be vacated and set aside and the order of revocation reimposed.

DATED: October 12, 1984

  
STEWART A. JUDSON  
Administrative Law Judge

SAJ:lhj

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6  
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9 STATE OF CALIFORNIA  
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11 In the Matter of the Accusation )  
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13 100 Commonwealth Avenue )  
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14 License No. A-023676 )  
15 Respondent. )  
\_\_\_\_\_ )

NO. D-3235

ACCUSATION

16  
17 Comes now KENNETH WAGSTAFF, who charges and alleges as  
18 follows:

19 1. He is the Executive Director of the Board of Medical  
20 Quality Assurance (hereinafter referred to as "Board") and makes  
21 these charges and allegations in his official capacity as such.  
22 All section references are to the Business and Professions Code  
23 unless otherwise stated.

24 2. On March 16, 1970 Certificate No. A-023676 was issued  
25 by the Board to Ihsan Karaagac (hereinafter referred to as  
26 "respondent").

27 //

1                   3. Section 820 states:

2                   "Whenever it appears that any person holding a  
3                   license, certificate or permit under this division,  
4                   under any initiative act referred to in this division,  
5                   under Chapter 17 (commencing with Section 9000) of  
6                   Division 8, or under Chapter 4 (commencing with  
7                   Section 17800) of Part 3 of Division 7 may be unable  
8                   to practice his or her profession safely because the  
9                   licentiate's ability to practice is impaired due to  
10                  mental illness, or physical illness affecting com-  
11                  petency, the licensing agency may order the licentiate  
12                  to be examined by one or more physicians and surgeons  
13                  or psychologists designated by the agency. The report  
14                  of the examiners shall be made available to the licen-  
15                  tiate and may be received as direct evidence in pro-  
16                  ceedings conducted pursuant to Section 822."

17                  4. Section 821 provides:

18                  "The licentiate's failure to comply with an  
19                  order issued under Section 820 shall constitute  
20                  grounds for the suspension or revocation of the licen-  
21                  tiate's certificate or license."

22                  5. On August 4, 1983 the Board filed a Petition for an  
23                  Order for Psychiatric Examination (p-71), a true and correct copy  
24                  of which is attached hereto as Exhibit A, and which is incorporated  
25                  herein by this reference.

26                  6. On October 21, 1983 the Board filed an Order (P-71)  
27                  directing that respondent be examined by a psychiatrist to



1 determine whether his ability to practice medicine safely is  
2 impaired because he is mentally ill. That order directed that  
3 respondent arrange an appointment with the designated examining  
4 psychiatrist within 60 days after receipt of his name. A true  
5 and correct copy of that order is attached hereto as Exhibit B  
6 and incorporated herein by this reference.

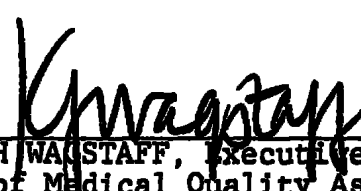
7 7. On October 28, 1983, and again on November 1, 1983,  
8 respondent was mailed a copy of the Petition (P-71), Order (P-71),  
9 and a letter giving him the name and address of the examining  
10 psychiatrist selected by the Board. On November 3, 1983 respondent  
11 acknowledged receipt of these documents.

12 8. As of August 1, 1984, respondent has not contacted  
13 nor been examined by the designated examining psychiatrist.

14 9. The conduct alleged in paragraphs 1 through 8 is  
15 grounds for suspension or revocation of respondent's certificate  
16 under sections 820 and 821.

17 WHEREFORE, complainant prays that a hearing be held and  
18 respondent's certificate be suspended or revoked or such other  
19 action be taken as is proper.

20 DATED: August 23, 1984.

21  
22   
23 KENNETH W. STAFF, Executive Officer  
24 Board of Medical Quality Assurance  
25 State of California  
26 Complainant  
27